

SENATE BILL No. 177

DIGEST OF INTRODUCED BILL

Citations Affected: IC 12-26-7-2; IC 35-36-3.

Synopsis: Incompetence to stand trial. Provides that a third party who contracts with the division of mental health and addiction (division) may: (1) provide competency restoration services; and (2) initiate a regular commitment proceeding. Requires a defendant committed to the division who subsequently attains competency to be immediately returned to the court for trial unless the provider of restoration services files a petition objecting to the immediate return. Provides that a psychologist or psychiatrist appointed in a competency hearing may not be an employee or a contractor at a state institution. (The introduced version of this bill was prepared by the commission on mental health.)

Effective: July 1, 2004.

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January 6, 2004, read first time and referred to Committee on Criminal, Civil and Public Policy.

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Introduced

Second Regular Session 113th General Assembly (2004)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

SENATE BILL No. 177

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 12-26-7-2 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) This section does
3 not apply to the commitment of an individual if the individual has
4 previously been committed under IC 12-26-6.
5 (b) A proceeding for the commitment of an individual who appears
6 to be suffering from a chronic mental illness may be begun by filing
7 with a court having jurisdiction a written petition by any of the
8 following:
9 (1) A health officer.
10 (2) A police officer.
11 (3) A friend of the individual.
12 (4) A relative of the individual.
13 (5) The spouse of the individual.
14 (6) A guardian of the individual.
15 (7) The superintendent of a facility where the individual is
16 present.
17 (8) A prosecuting attorney in accordance with IC 35-36-2-4.

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(9) A prosecuting attorney or the attorney for a county office if civil commitment proceedings are initiated under IC 31-34-19-3 or IC 31-37-18-3.

(10) A third party that contracts with the division of mental health and addiction to provide competency restoration services to a defendant under IC 35-36-3-3 or IC 35-36-3-4.

SECTION 2. IC 35-36-3-1, AS AMENDED BY P.L.215-2001, SECTION 109, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. (a) If at any time before the final submission of any criminal case to the court or the jury trying the case, the court has reasonable grounds for believing that the defendant lacks the ability to understand the proceedings and assist in the preparation of his a defense, the court shall immediately fix a time for a hearing to determine whether the defendant has that ability. The court shall appoint two (2) or three (3) competent, disinterested:

(1) psychiatrists; or

(2) psychologists endorsed by the Indiana state board of examiners in psychology as health service providers in psychology. or physicians;

At least one (1) of ~~whom~~ **the individuals appointed under this subsection** must be a psychiatrist. ~~who~~ **However, neither may be an employee or a contractor of a state institution (as defined in IC 12-7-2-184). The individuals who are appointed** shall examine the defendant and testify at the hearing as to whether the defendant can understand the proceedings and assist in the preparation of the defendant's defense.

(b) At the hearing, other evidence relevant to whether the defendant has the ability to understand the proceedings and assist in the preparation of the defendant's defense may be introduced. If the court finds that the defendant has the ability to understand the proceedings and assist in the preparation of the defendant's defense, the trial shall proceed. If the court finds that the defendant lacks this ability, it shall delay or continue the trial and order the defendant committed to the division of mental health and addiction. ~~to be confined by the division in an appropriate psychiatric institution.~~ **The division of mental health and addiction shall provide competency restoration services or enter into a contract for the provision of competency restoration services by a third party in the:**

(1) location where the defendant currently resides; or

(2) least restrictive setting appropriate to the needs of the defendant and the safety of the defendant and others.

However, if the defendant is serving an unrelated executed

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1 sentence in the department of correction at the time the defendant
 2 is committed to the division of mental health and addiction under
 3 this section, the division of mental health and addiction shall
 4 provide competency restoration services or enter into a contract
 5 for the provision of competency restoration services by a third
 6 party at a department of correction facility agreed upon by the
 7 division of mental health and addiction or the third party
 8 contractor and the department of correction.

9 SECTION 3. IC 35-36-3-2, AS AMENDED BY P.L.215-2001,
 10 SECTION 110, IS AMENDED TO READ AS FOLLOWS
 11 [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) Whenever the defendant
 12 attains the ability to understand the proceedings and assist in the
 13 preparation of the defendant's defense, the ~~division of mental health~~
 14 ~~and addiction;~~ through the superintendent of the appropriate psychiatric
 15 ~~institution;~~ director or medical director of the entity:

- 16 (1) from which the defendant is receiving competency
- 17 restoration services; or
- 18 (2) to which the defendant has been civilly committed under
- 19 this chapter;

20 shall certify that fact to the proper court, which shall enter an order
 21 directing the sheriff to return the defendant, **if necessary. Except as**
 22 **provided in subsection (b),** the court ~~may~~ **shall** enter such an order
 23 immediately after being sufficiently advised of the defendant's
 24 attainment of the ability to understand the proceedings and assist in the
 25 preparation of the defendant's defense. Upon the return to court of any
 26 defendant committed under section 1 of this chapter, the court shall
 27 hold the trial as if no delay or postponement had occurred.

28 (b) **A court may not enter an order for the immediate return of**
 29 **a defendant under subsection (a) if the director or medical director**
 30 **of an entity described in subsection (a) submits a petition to**
 31 **postpone the return of the defendant to the court. A petition must**
 32 **be submitted to the court at the same time the director or medical**
 33 **director of an entity described in subsection (a) certifies that the**
 34 **defendant has attained the ability to understand the proceedings**
 35 **and assist in the preparation of a defense. The petition must:**

- 36 (1) explain the basis for postponing the return of the
- 37 defendant; and
- 38 (2) indicate the circumstance or circumstances under which
- 39 the defendant may be returned.

40 A petition filed under this subsection may not postpone the return
 41 of the defendant for more than six (6) months, less any time the
 42 defendant has received competency restoration services or has

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1 **been civilly committed under this chapter. Upon the expiration of**
 2 **time permitted for postponing the return of a defendant under this**
 3 **subsection, the defendant shall immediately be returned to the**
 4 **court.**

5 SECTION 4. IC 35-36-3-3, AS AMENDED BY P.L.215-2001,
 6 SECTION 111, IS AMENDED TO READ AS FOLLOWS
 7 [EFFECTIVE JULY 1, 2004]: Sec. 3. (a) Within ninety (90) days after:

8 (1) a defendant's ~~admittance to a psychiatric institution; the~~
 9 ~~superintendent of the psychiatric institution~~ **admission to a state**
 10 **institution (as defined in IC 12-7-2-184); or**

11 (2) **the initiation of competency restoration services to a**
 12 **defendant by a third party contractor;**

13 **the director or medical director of the state institution (as defined**
 14 **in IC 12-7-2-184) or the director or medical director of the third**
 15 **party contractor, if the division of mental health and addiction has**
 16 **entered into a contract for the provision of competency restoration**
 17 **services by a third party,** shall certify to the proper court whether the
 18 defendant has a substantial probability of attaining the ability to
 19 understand the proceedings and assist in the preparation of the
 20 defendant's defense within the foreseeable future.

21 (b) If a substantial probability does not exist, the ~~division of mental~~
 22 ~~health and addiction state institution (as defined in IC 12-7-2-184)~~
 23 **or the third party contractor** shall initiate regular commitment
 24 proceedings under IC 12-26. If a substantial probability does exist, the
 25 ~~division of mental health and addiction state institution (as defined~~
 26 **in IC 12-7-2-184) or third party contractor** shall retain the
 27 defendant:

28 (1) until the defendant attains the ability to understand the
 29 proceedings and assist in the preparation of the defendant's
 30 defense and is returned to the proper court for trial; or

31 (2) for six (6) months from the date of the:

32 (A) defendant's ~~admittance~~ **admission to a state institution**
 33 **(as defined in IC 12-7-2-184); or**

34 (B) **initiation of competency restoration services by a third**
 35 **party contractor;**

36 whichever first occurs.

37 SECTION 5. IC 35-36-3-4, AS AMENDED BY P.L.215-2001,
 38 SECTION 112, IS AMENDED TO READ AS FOLLOWS
 39 [EFFECTIVE JULY 1, 2004]: Sec. 4. If a defendant who was found
 40 under section 3 of this chapter to have had a substantial probability of
 41 attaining the ability to understand the proceedings and assist in the
 42 preparation of the defendant's defense has not attained that ability

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1 within six (6) months after the date of the:
2 (1) defendant's ~~admittance to a psychiatric institution; the division~~
3 ~~of mental health and addiction~~ **admission to a state institution**
4 **(as defined in IC 12-7-2-184); or**
5 **(2) initiation of competency restoration services by a third**
6 **party contractor;**
7 **the state institution (as defined in IC 12-7-2-184) or the third party**
8 **contractor, if the division of mental health and addiction has**
9 **entered into a contract for the provision of competency restoration**
10 **services by a third party,** shall institute regular commitment
11 proceedings under IC 12-26.

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